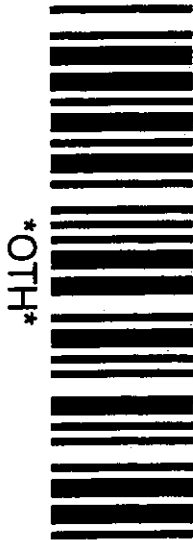


ROYAL BOROUGH
OF
KENSINGTON & CHELSEA

DOCUMENT SEPARATOR

DOCUMENT TYPE:

OTHER



OTH

Swanscombe Road - looking West

121



THE ROYAL
BOROUGH OF



KENSINGTON
AND CHELSEA

Site at 7 Swanscombe Road
- former Organ Factory behind

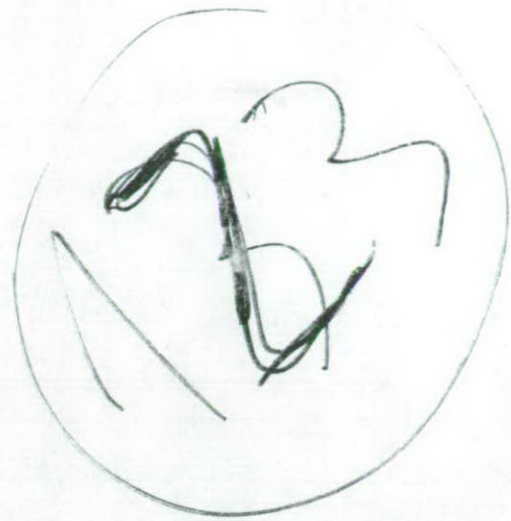
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KENSINGTON
AND CHELSEA



THE ROYAL
BOROUGH OF





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7 19 '02

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7 19 '02





131



CC011454

avanti architects



project
7 Swanscombe
Rd, W11
drawing
Site Photographs
scale /size

date
June 2001

status
Conservation Area
Consent
Application for
Demolition
drawing no /revision
0112-003



R.B.K. & C.
TOWN PLANNING
28 JUN 2001
RECEIVED

© Avanti Architects
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t 020 7284 1616

A32



7 Swanscombe Road W11

View from St Ann's Road

A new development of mixed housing by NHHO

August 2002

Avanti Architects Ltd

1 Torriano Mews
London NW5 2RZ

tel 020 7284 1616
fax 020 7284 1555

133



DATED

7th March

2003

THE DEVELOPER: NOTTING HILL HOME OWNERSHIP LIMITED

**UNILATERAL SECTION 106
UNDERTAKING**

relating to
the former Sheepshank Public House
now known as
7 Swanscombe Road
London W11

Coudert Brothers
60 Cannon Street
London
EC4N 6JP

Ref: AON/0100008/0377

DEED dated

7th March 2003

BY:

- (1) NOTTING HILL HOME OWNERSHIP LIMITED whose registered office is at Grove House 27 Hammersmith Grove London W6 0JL ("the Developer")

TO:

- (2) THE MAYOR AND BURGESSES OF THE ROYAL BOROUGH OF KENSINGTON AND CHELSEA (the "First Council")

RECITALS:

- (A) The First Council is the local planning authority for the purposes of the Town and Country Planning Act 1990 ("the Act") for the majority of the area within which the Land is situated. The London Borough of Hammersmith and Fulham (the "Second Council") is the other local planning authority for the purposes of the Act for the remainder of the area within which the Land is situated.
- (B) The Developer owns the freehold interest in the piece or parcel of land registered at H M Land Registry under title number NGL378781 ("the Land") at the former Sheepshank Public House now known as 7 Swanscombe Road shown edged red on the annexed plan free from incumbrances. A copy of the title is annexed.
- (C) The Developer applied to the First Council by written application reference number PP/02/0901 dated 19 April 2002 and to the Second Council by written application reference 2002/1161/P dated 10 May 2002 for permission to develop the Land by the construction of a residential development of 17 units comprising 1, 2 and 3 bedroom units (including 11 units of Affordable Housing) and the provision of 11 off street parking spaces ("the Development").
- (D) At a meeting of the First Council's Planning sub-Committee on the 3 September 2002 the First Council resolved to refuse planning permission for the Development.
- (E) The Second Council has failed to determine the application for the Development within the statutory period for determination.
- (F) The Developer has appealed to the Secretary of State by two appeals against the refusal and the failure to determine respectively.
- (G) The Developer is willing to give this Unilateral Undertaking to the First Council to make provision for 11 affordable flats forming part of the Development in the event of the Secretary of State granting planning permission for the Development envisaged in the applications.

NOW THIS DEED WITNESSES as follows:

- 1 In this Deed "the Act" means the Town and Country Planning Act 1990
- 2 This Deed is made pursuant to Section 106 of the Act (and is a planning obligation for the purposes of that Section) and the First Council is the local planning authority by which the provisions of this Deed are intended to be enforceable
- 3 No person shall be liable for any breach of the planning obligations contained in this Deed occurring after he has parted with his interest in the Land or the part in respect of which such breach occurs
- 4 This Deed shall come into effect only upon the date upon which the Secretary of State grants the planning permission for the Development PROVIDED ALSO THAT
 - 4.1 unless and until the Developer implements the planning permission by the carrying out of a material operation (as defined in Section 56(4) of the Act) nothing in this Deed shall oblige the Developer to comply with the undertaking on the Developer's part contained in clause 6 of this Deed and
 - 4.2 for the purpose of determining whether or not a material operation has been carried out there shall be disregarded such operations as demolition site clearance site preparation diversion and laying of services and construction of access or service roads
- 5 If the Permission is quashed or is revoked or otherwise withdrawn or (without the consent of the Developer) is modified by any statutory procedure or expires before the Development has been implemented this Deed shall cease to have effect
- 6 The Developer undertakes to observe and perform the restrictions and obligations set out in the Schedule hereto
- 7 This Deed is a Local Land Charge and shall be registered as such
- 8 Save where the context otherwise requires:
 - 8.1 references to any person shall include the successors in title of that party
 - 8.2 any person deriving title from the Developer shall only be bound by the Planning Obligations which are contained in this Deed to the extent that such person has a legal interest in the Land (or part of it) at the time when such obligations arise

EXECUTED AS A DEED and delivered on but not before the date of this Deed

The COMMON SEAL of NOTTING HILL
HOME OWNERSHIP LIMITED was
hereunto affixed in the presence of:

)
)
)



Authorized Signatory



Director/Secretary



8289

SCHEDULE

(Restrictions and Obligations)

1. INTERPRETATION

In this Deed:-

"Affordable Housing"	means residential accommodation which meets the objectives of a Registered Social Landlord
"Affordable Housing Flats"	means eleven of the units of residential accommodation to be provided as Affordable Housing for rent or for shared ownership on the Land as part of the Development
"Registered Social Landlord"	means an organisation registered by the Housing Corporation in accordance with the Housing Act 1996 (or if such bodies cease to exist or be superseded then the nearest equivalent body whose objectives include the provision of Affordable Housing)
"Relevant Body"	means a mortgagee chargee or receiver of a Registered Social Landlord

2. THE DEVELOPER'S COVENANTS

The Developer hereby covenants not to occupy or permit the occupation of any of the Affordable Housing Flats other than by a tenant or tenants of a Registered Social Landlord

3. EXCLUSIONS

3.1 The covenants in paragraph 2 of this Schedule shall not be binding in the circumstances set out below:-

3.1:1 (Subject to paragraph 3.2 of this Schedule) a Relevant Body who seeks to dispose of the Affordable Housing Flats or any part thereof (as to such part) pursuant to its power of sale exercised pursuant to default of the terms of a mortgage or charge or any person deriving title from any such Relevant Body

- 3.1:2 An occupant of an Affordable Housing Flat who has exercised a statutory right to acquire under the Housing Act 1996 or otherwise ("Occupant") or any person (other than a Registered Social Landlord) deriving title under that Occupant
 - 3.1:3 A person acquiring a shared ownership lease of an Affordable Housing Flat ("Lessee") or any person (other than a Registered Social Landlord) deriving title under that Lessee
- 3.2 In the event that a Relevant Body wishes to exercise its power of sale and/or dispose of the Affordable Housing Flats or any part thereof it shall first use reasonable endeavours to sell the Affordable Housing Flats to another Registered Social Landlord at a price to be agreed by the Relevant Body PROVIDED THAT if after a period of two months from the date of default (having used all reasonable endeavours as aforesaid) such person shall not have sold the Affordable Housing Flats to another Registered Social Landlord the Relevant Body shall thenceforth be under no obligation to sell the Affordable Housing Flats to a Registered Social Landlord and shall be entitled to exercise its powers of sale or make a disposition as the case may be free of any restrictions under this Deed which shall thereupon determine absolutely and be of no further effect



A: Property Register

This register describes the land and estate comprised in the title.

HAMMERSMITH AND FULHAM

1. The **Freehold** land shown edged with red on the plan of the above Title filed at the Registry and being The Sheepshank Public House, Norland Road, Notting Hill, (W11 4SU).

B: Proprietorship Register

This register specifies the class of title and identifies the owner. It contains any entries that affect the right of disposal.

Title Absolute

1. (18 May 1999) **PROPRIETOR:** NOTTING HILL HOME OWNERSHIP LIMITED of Grove House, 27 Hammersmith Grove London W6 0JL.
2. (18 May 1999) **RESTRICTION:** Except under an order of the registrar no disposition by the proprietor of the land is to be registered and none shall take effect unless made with the consent of the Housing Corporation when such consent is required under the provisions of section 9 of the Housing Act 1996.
3. (18 May 1999) **RESTRICTION:** Except under an order of the registrar no charge by the proprietor of the land is to be registered unless a certificate signed by the secretary or solicitor thereto has been furnished that such charge does not contravene any of the provisions of the rules of the said proprietor.

C: Charges Register

This register contains any charges and other matters that affect the land

1. (23 September 2002) The land is subject to the rights granted by a Deed dated 18 September 2002 made between (1) Notting Hill Home Ownership Limited and (2) Thames Water Utilities Limited.

The said Deed also contains restrictive covenants by the grantor.

NOTE: Copy in Certificate. Copy filed.

END OF REGISTER

*NOTE A: A date at the beginning of an entry is the date on which the entry was made in the Register.
NOTE B: This is a copy of the register on 23 September 2002 at 14:59:57.*

NGL 378781

H.M. LAND REGISTRY

H.M. LAND REGISTRY

NGL378781

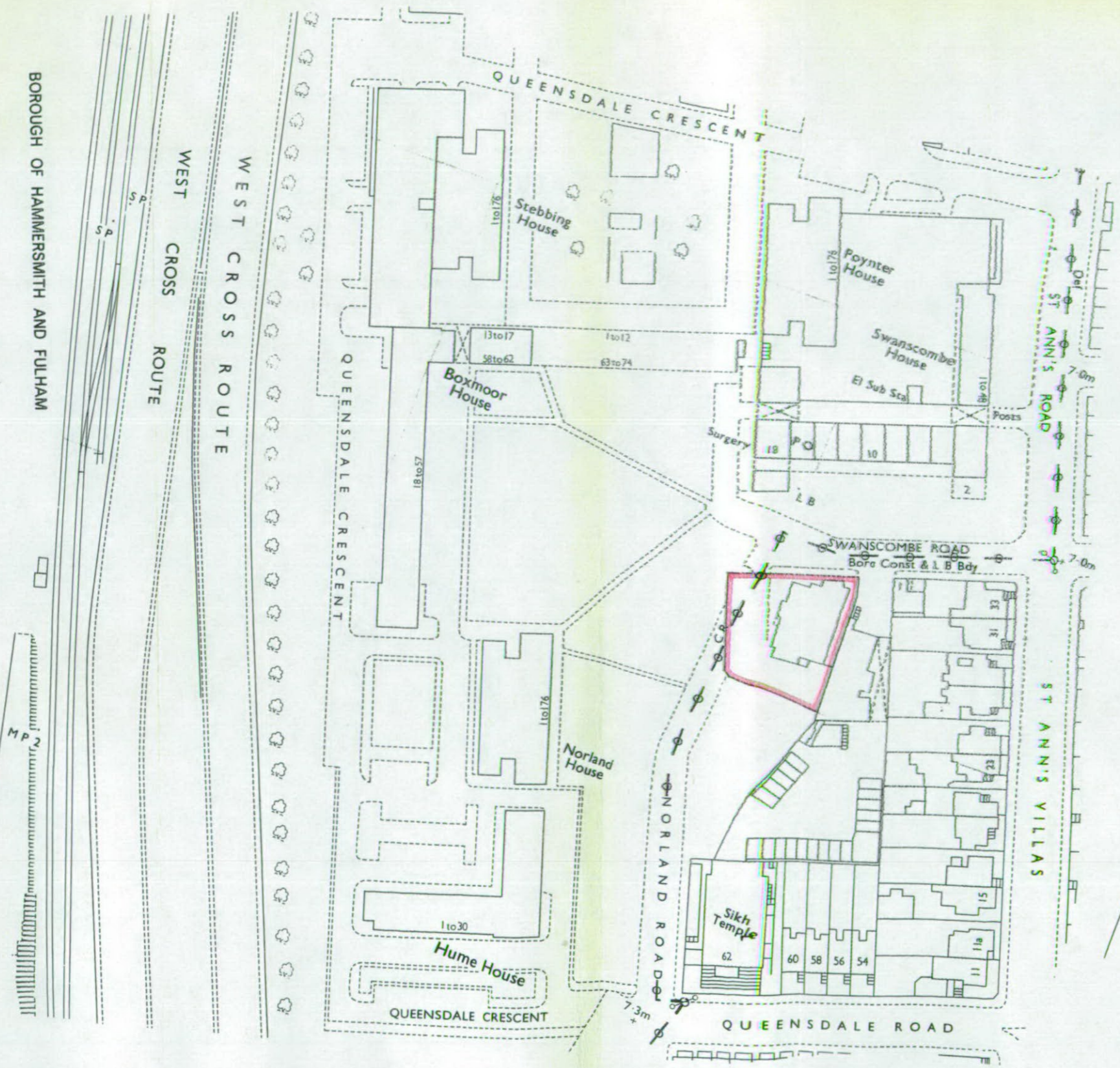
ORDNANCE SURVEY	COUNTY	SHEET	NATIONAL GRID	SECTION
PLAN REFERENCE	GREATER LONDON		TQ 2380	K

Scale: 1/1250

© Crown copyright 1975

Old Reference LN VI 76 E & F
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BOROUGH OF KENSINGTON AND CHELSEA



BOROUGH OF HAMMERSMITH AND FULHAM



hat affect the land

ct to the rights granted by a Deed

(1) Notting Hill Home Ownership

s Limited.

ve covenants by the grantor.

FILE NUMBER

date on which the entry was made in the Register.

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GISTER

134

NOTTING HILL HOME OWNERSHIP

7 Swanscombe Road
London
W11

STATEMENT OF CASE

Appeal by Written Representations

Royal Borough of Kensington & Chelsea

(Application ref: PP/02/0901)

and

London Borough of Hammersmith and Fulham

(Application ref: 2002/1161/P)

SJ Berwin
222 Grays Inn Road
London WC1X 8XF
Tel: 020 7533 2222
Fax: 020 7533 2000

NOVEMBER 2002

EX DIR	HBG	FP	GAB	AD	BLU	AO AK
R.B. K.C.	25 NOV 2002				PLANNING	
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1 INTRODUCTION

1.1 This Statement of Case is in respect of an appeal scheme that comprises a residential development of 17 units (including 11 units of affordable housing) comprising 1, 2 and 3-bedroom units and provision for 11 off-street parking spaces. The majority of the appeal site is within the Royal Borough of Kensington and Chelsea ("RBKC"), and its north-west corner is situated within the London Borough of Hammersmith and Fulham ("Hammersmith").

1.2 Therefore this Statement of Case is submitted in respect of two appeals:

(1) The first appeal is made under Section 78 of the Town and Country Planning Act 1990, and is against the refusal by RBKC to grant planning permission (ref: PP/02/00901/NAJD), despite officers' recommendations to approve the scheme on two occasions. The decision letter dated 15 October 2002 is attached as Appendix 3, and cites the following two reasons for refusal:

1. *The proposed development would be of a scale, bulk and detail that would relate poorly to nearby buildings and property and would ham this part of the Norland Conservation Area. As such, the proposed development is contrary to Policies CD25, CD26, CD48, CD52 and CD53 of the Unitary Development Plan (as Modified).*
2. *This proposal to provide 17 residential units would produce a development with a habitable room density greatly in excess of Unitary Development Plan guidelines, and a parking provision falling short of Unitary Development Plan guidelines, and in consequence be contrary to Policies H11, H12 and TR46 of the Unitary Development Plan (as Modified)."*

(2) The second appeal is made under Section 79 of the Town and Country Planning Act 1990, and is against non-determination by Hammersmith of a parallel application, whose statutory eight-week period expired on 8 July 2002 (ref: 2002/1161/P). As referred to below, the Appellant understands that Hammersmith was due to consider the application on 5 August 2002, with officers' recommendation to approve.

1.3 As the two applications (and therefore both appeals) relate to the same scheme, this Statement of Case deals with both appeals and the Inspector is respectfully requested to consider the two appeals jointly.

2 THE APPEAL SITE AND SURROUNDINGS

The appeal site

2.1 The appeal site covers approximately 859 square metres and is situated on the southern side of Swanscombe Road. The majority of the site is located within RBKC, with about 10% situated within Hammersmith (the north-west corner of the appeal site). Site location plans, and photographs of the appeal site, are provided in Appendix 1 and 2, respectively.

2.2 The appeal site has been derelict since the Sheepshank Public House, a post-war building that formerly occupied the site, was demolished in March 2002. This was in accordance with a conservation area consent dated 21 December 2001, which was unconditional on planning permission being obtained for redevelopment (see Appendix 10). Photographs of the pre-existing Sheepshank Public House are included in Appendix 2, and Plan no. 0112-P-GA14 (see Appendix 4) illustrates its footprint within the appeal site.

The Norland Conservation Area

2.3 The appeal site is also situated at the western edge of the Norland Conservation Area, and the conservation area boundary follows the appeal site's western and northern boundaries. A plan showing the Conservation Area's original designation boundaries, extensions, and listed buildings, is included in Appendix 13.

2.4 The Norland Conservation Area was originally designated in 1969, in order to protect the character and appearance of the original Norland Estate as built up to 1852, along with the completed north side of St James Gardens (built 1869-1879). The Norland Estate Conservation Area was identified from, and is thus characterised by, the significant groups of listed buildings and the original planned layout of the Norland Estate.

2.5 The Norland Estate layout is based on two principal roads: Addison Avenue running north-south, and Queensdale Road running east-west. Addison Avenue provides a vista leading to the Estate's northern limit, which is marked by the church within St James Gardens. Norland Square marks the Estate's south-east corner, and the Estate's south-west corner is defined by Royal Crescent, which

was laid out to be broken centrally by St Anne's Villas, in order to allow unobstructed passage of the sixteenth century Counter's Creek sewer.

2.6 However in contrast, the appeal site is situated within one of the 1978 extensions to the Conservation Area. The western extension pushed the Conservation Area boundary to include the eastern verge of Norland Road, which runs along the former Counter's Creek sewer. This verge appears on historical maps (see Appendix 13) as the Estate's undeveloped back-land area to St Anne's Villas.

2.7 Appendix 13 provides extracts of RBKC's Conservation Area Policy Statement, including a plan showing the Conservation Area boundary and extensions, and a description, diagrams and historical maps, illustrating the Norland Estate's nineteenth century development. The location of the appeal site is marked out on the plan showing the Conservation Area boundaries, and is illustrated in relation to the Norland Estate, on the historical maps (see Appendix 13).

2.8 The exclusion of the extension area (which includes the appeal site) from the original Conservation Area designation underlines its anomalous character and indicates that its later annexation was to equate with RBKC's borough boundary, rather than for reasons of architectural significance.

The surroundings of the appeal site

2.9 The site's immediate vicinity, including this part of the Norland Conservation Area, is of extremely mixed character:

- The Edward Woods Estate provides a dominant visual influence and dramatic backdrop to the immediate vicinity of the appeal site. It mainly comprises 24-storey blocks of flats dating from the 1960s/1970s, with 5-storey blocks opposite the appeal site on Swanscombe Road, and with mowed grass amenity areas stretching towards the Shepherd's Bush roundabout. The estate is located within Hammersmith, to the north and west of the appeal site.
- An unremarkable modern community centre building with a pyramid-shaped hipped roof, and an orientalised neo-Rococco style building accommodating a Sikh temple, are located to the south of the appeal site.

- No. 3 Swanscombe Road, a tall 3-storey pitched roof building formerly known as the “Organ Factory” and now converted to residential use with associated commercial activities, is situated immediately east of the appeal site.
- The Grade II listed neo-Gothic houses on St Anne's Villas are situated further east of the appeal site.

2.10 Photographs of the appeal site surroundings are provided in Appendix 2. Urban design analysis drawings of the appeal site, the appeal scheme, and its context, are provided in Appendix 5.

3 PLANNING HISTORY OF THE SITE

- 3.1 On 31 December 1997, RBKC granted planning permission for residential development comprising two 3-bedroom dwellings and two 4-bedroom dwellings with private rear gardens, in a contemporary modernist architectural style. Conservation area consent was also granted for the demolition of the pre-existing Sheepshank Public House.
- 3.2 On 23 June 1999, RBKC granted permission for the erection of a 3-storey residential development in a contemporary architectural style (but with more traditional pitched roofs), and comprising 11 flats (all of which affordable), two town houses and nine car parking spaces. Hammersmith granted planning permission for this scheme on 22 April 1999. These permissions remain valid but not implemented.
- 3.3 On 21 December 2001, RBKC granted conservation area consent for the demolition of the pre-existing Sheepshank Public House. This consent was unconditional on planning permission being obtained for redevelopment.
- 3.4 Following the grant of planning permission in June 1999, underground sewer and drains were discovered within the footprint of the scheme approved in 1999. This effectively rendered the approved scheme technically unfeasible, and led to the submission of the planning application that is the subject of this appeal.
- 3.5 Copies of the planning permissions and conservation area consents referred to above are attached as Appendix 10.

4 THE APPEAL SCHEME

Notting Hill Home Ownership

4.1 This appeal is made by the housing association Notting Hill Home Ownership ("NHHO"), which is a Registered Social Landlord (Housing Corporation registration number SL3119). Together with the Notting Hill Housing Trust, NHHO forms the majority of the Notting Hill Housing Group. NHHO is the affordable home ownership division of the Notting Hill Housing Group. Since forming in 1980, NHHO has provided over 4,000 homes to working individuals and families on moderate incomes, who could not afford to buy a home outright in London and the Home Counties. From the outset NHHO has had a reputation as a pioneer in the social housing sector as well as a leader in innovative design solutions.

Description of the appeal scheme

4.2 The proposal is for a composite block comprising interlocking tranches of 3-5 storeys, and accommodating 17 self-contained flats of which 11 would be affordable units. The "T" shaped plan form of the appeal scheme will address the two main frontages, Swanscombe Road and Norland Road. The rear open area facing the former Organ Factory will accommodate eight parking spaces accessed via a proposed new pavement crossover from Swanscombe Road and through an archway. The ground floor void space on the Swanscombe Road frontage will comprise additional three parking spaces (including a dedicated parking space for the disabled) accessed directly from Swanscombe Road via a proposed upgrade of the existing pavement crossover. A communal garden for the flats and private patios for each of the three town houses are proposed in the western area of the appeal site.

4.3 The appeal scheme has been developed in order to respond to, and integrate with, the contrasting and varying architectural scales and styles that provide its context (see urban design analysis drawings, attached as Appendix 5). The elevational treatment of the appeal scheme comprises a simple modern design, and its height has been graded on each elevation to provide a transition to the adjacent buildings and the wider townscape. The main facing materials are proposed to be

fair-faced brick at ground floor level, with terracotta tiles and render to the upper floors. The proposed roofscape comprises a recessed fifth storey and terraced areas. The windows are proposed to be polyester powder coated aluminium framed, similar to those used in the Organ Factory redevelopment.

Progression of the appeal scheme during the application process

- 4.4 The two planning applications to which these appeals relate were submitted on 19 April 2002 (to RBKC) and on 10 May 2002 (to Hammersmith). The appeal scheme drawings that were refused consent, RBKC planning application forms, covering letter from the Appellant's architects and RBKC acknowledgement letter, and design statement submitted in connection with the application, are included in Appendix 4.
- 4.5 From initial pre-application discussions in June 2001, and throughout the application process until July 2002, the appeal scheme was subject to considerable detailed discussion between the Appellant's architects and RBKC planning and conservation officers, and the scheme was progressively evolved in response to officers' comments relating to design, amenity, parking and housing density issues. Copies of all correspondence between the Appellant's architects and RBKC officers (including further design statements) are provided in Appendix 6.
- 4.6 RBKC officers recommended that the appeal scheme be approved on two occasions: 23 July and 3 September 2002. The officers' two reports to the Planning Services Committee are attached as Appendix 7.
- 4.7 In their meeting on 23 July 2002, members of the RBKC Planning Services Committee resolved to defer a decision on the appeal scheme, and instructed officers to negotiate further with the Appellant, in order to reduce the unit numbers and habitable room density, and design modifications. A copy of the minutes of that meeting is included in Appendix 8.
- 4.8 In a meeting held on 1 August 2002 between the RBKC case planning officer (Derek Taylor), the Appellant and the Appellant's architects, it was submitted that reducing the number of units would harm the viability of the appeal scheme, and that the scheme had been carefully designed to

address the scale and materials of the existing buildings in the Conservation Area. On this basis, and for the reasons set out in two letters to Derek Taylor (dated 7 August from the Appellant; and dated 23 August 2002 from the Appellant's architect; see Appendix 6), the Appellant requested that the Planning Services Committee re-consider the appeal scheme in unaltered form.

4.9 The officer's report to committee on 3 September did not fully report all of the reasons set out in those two letters to members (see pages 1-2 of the report, Appendix 7). However RBKC officers did not insist upon revisions, and recommended approval a second time (see Appendix 7).

4.10 In their meeting on 3 September 2002, members of the RBKC Planning Services Committee resolved to refuse planning permission for the appeal scheme. The minutes of that meeting (see Appendix 8) cite the following two reasons:

- “1. *The proposed development would be of a scale, bulk and detail that would relate poorly to nearby buildings and property and would harm this part of the Norland Conservation Area. As such, the proposed development is contrary to Policies CD25, CD26, CD48, CD52 and CD53 of the Unitary Development Plan (as Modified).*”
2. *This proposal to provide 17 residential units would produce a development with a habitable room density greatly in excess of Unitary Development Plan guidelines, and a parking provision falling short of Unitary Development Plan guidelines, and in consequence be contrary to Policies H11, H12 and TR46 of the Unitary Development Plan (as Modified).*”

4.11 Sections 7, 8 and 9 of this Statement of Case deals in detail with each of these two reasons for refusal.

4.12 Since the expiry of the Hammersmith application's statutory eight-week period on 8 July 2002, there has neither been a formal determination by Hammersmith, or a written notification of a withdrawal by or on behalf of the Appellants. Consequently the Appellant also appeals against non-determination of the Hammersmith application, under Section 79 of the Town and Country Planning Act 1990. Copies of all written communication with Hammersmith and its officers in

connection with the Hammersmith application (including the planning application forms and acknowledgement letter from Hammersmith) are attached as Appendix 9.

- 4.13 The Appellant understands that Hammersmith was due to consider the application on 5 August 2002, with officers' recommendation to approve (see paragraph 4.12 in RBKC officer's report to committee on 23 July 2002, in Appendix 7).

5 DEVELOPMENT PLAN POLICIES

Royal Borough of Kensington and Chelsea

5.1 For the purposes of Section 54A of the Town and Country Planning Act 1990, the relevant development plan policies are contained within the RBKC Unitary Development Plan adopted 25 May 2002. The relevant UDP policies are listed below and are attached as Appendix 11.

Townscape and Design

- CD25 (new development to be of a high standard of design and compatible with the scale, height, bulk, materials and character of the surroundings)
- CD26 (infill development to conform to existing building lines, the area's overall scale and character, to respect form and materials of adjoining buildings and have regard to open spaces that are important to the proposed development and surrounding area).
- CD48 (special attention to be paid to the desirability of preserving or enhancing the character or appearance of each conservation area).
- CD52 (development in a conservation area to preserve and enhance the character or appearance of the area)
- CD53 (development in conservation areas to be of a high standard of design and compatible with the surrounding development in relation to: character, scale and pattern; bulk and height; proportion and rhythm; roofscape; materials; and landscaping and boundary treatment)

Housing

- H11 (housing designed to higher densities is to be resisted except where it:....(c) is an infill scheme where a higher density development is necessary for townscape reasons...)
- H12 (housing designed to very high densities is to be resisted, unless necessary for townscape reasons.....)

Parking

- TR46 (new residential development to include off-street parking up to maximum standards except....(d) where, for specific townscape reasons....., off-street parking is less likely to be successfully designed into the scheme).

London Borough of Hammersmith and Fulham

5.2 For the purposes of Section 54A of the Town and Country Planning Act 1990, the relevant development plan policies are contained within the Hammersmith and Fulham Unitary Development Plan adopted December 1994, which is currently under review; the UDP Alterations were the subject of a public inquiry in 2001, and the plan is due for adoption in the Spring of 2003. The proposed UDP Alterations are also a material consideration and as the UDP is at an advanced stage of preparation, its policies carry considerable weight. Accordingly, the UDP policies listed below relate to the proposed UDP Alterations and are attached as Appendix 12.

Townscape and design

- EN8 (high standard of design required in new buildings compatible with the scale and character of existing development and its setting. The council wishes to encourage, where appropriate, the use of innovative and contemporary materials; however, these must be sensitively integrated into the existing built form and landscape)

Affordable housing

- HO5(i)(a-c) (the Council will regard the provision of affordable housing as a material consideration and will negotiate to secure the maximum reasonable proportion of permanently available affordable housing)
- H07 (new residential developments must normally satisfy the Council's density standards; higher densities may be permitted where criteria under (i) – (b) are met)
- H012 (in new residential developments all new dwellings should have access to an area of open amenity scape)

Residential density

- S2.1 (the density of new residential development shall normally be not more than 247 habitable rooms per hectare)
- S2.2 (mix of family and non-family dwellings impose a maximum density of between 210 h.r.ha – 247 h.r.ha, proportionate to the number of family and non-family dwellings)

5.3 Other material considerations, in the form of Government guidance and appeal decisions, are dealt with in Sections 6 and 10 of this Statement of Case.

6 SUPPLEMENTARY GUIDANCE

DoE Circular No. 6/98: Planning and Affordable Housing

6.1 Paragraph 14 refers to objectives to *".....make the most effective use of land within existing urban areas, reduce the need to travel particularly by car, and maintain the viability and vitality of town centres....."* Paragraph 14 continues to state that *"Higher densities should be encouraged on easily accessible sites, where appropriate..."*

6.2 Paragraph 14 also states that *"...local planning authorities should be flexible on car parking standards as car ownership rates are generally lower for occupants of affordable housing than for those of general market housing. This approach may make it easier for the developer to provide affordable housing."*

6.3 Copies of the relevant extracts from DoE Circular 6/98 are attached as Appendix 14.

ODPM Circular 01/02: The Town and Country Planning (Residential Density) (London and South East England) Direction 2002

6.4 ODPM Circular 01/02 sets out the reasoning behind the Deputy Prime Minister's decision to make the Town and Country Planning (Residential Density) (London and South East England) Direction 2002. The Direction gives effect to the Deputy Prime Minister's Parliamentary Statement on 18 July 2002, and both set out the Government's stance and aim that the housing numbers agreed in RPG9 should be delivered *".....within the presumption of making better use of land by improving design, increasing densities and using brown field sites to the full"* (paragraph 4 of the Direction).

6.5 Paragraph 2 of the Direction states that local authorities are now expected to *"... encourage developments which make more efficient use of land and seek greater intensity of development at places with good public transport accessibility."*

6.6 The Direction, and the Deputy Prime Minister's Parliamentary Statement on 18 July 2002, are both attached at Appendix 15.

PPG3: Housing (2000)

- 6.7 Paragraph 57 of PPG3 states that "*Policies which place unduly restrictive ceilings on the amount of housing that can be accommodated on a site, irrespective of its location and the type of housing envisaged...should be avoided.*"
- 6.8 Paragraph 60 states that "*Car parking standards for housing have become increasingly demanding and have been applied too rigidly.....Developers should not be required to provide more car parking than they.....might want, nor to provide off-street parking where there is no need, particularly in urban areas where public transport is available...*"
- 6.9 Paragraph 60 goes on to state that: "*Parking policies should be framed with good design in mind, recognising that car ownership varies with income, age, household type, and the type of housing and its location.*"
- 6.10 Copies of the relevant extracts from PPG3 are attached as Appendix 16.

PPG15: Planning and the Historic Environment

- 6.11 In relation to gap sites and replacements to buildings that make no positive contribution to the character or appearance of a conservation area, paragraph 4.17 states: "*What is important is not that the new buildings should directly imitate earlier styles, but that they should be designed with respect for their context....*"
- 6.12 Whilst it is the Appellant's case that the appeal scheme would enhance or preserve the Norland Conservation Area, paragraph 4.20 refers to the Courts' decision in South Lakeland District Council v. Secretary of State for the Environment (1992) 2 WLR 204, "*that there is no requirement in the legislation that conservation areas should be protected from all development which does not enhance or positively preserve.....the objective of preservation can be achieved either by development which makes a positive contribution to an area's character or appearance, or by development which leaves character and appearance unharmed.*"
- 6.13 Copies of the relevant extracts of PPG15 are attached as Appendix 17.

The Mayor's draft London Plan

- 6.14 The Mayor of London's draft London Plan dated June 2002 is a material consideration in this appeal, including the Mayor's policies in relation to affordable housing. The Mayor's policy "4B.3: Maximising the Potential of Sites" states as follows:

"The Mayor will and Boroughs should ensure development proposals achieve the highest possible intensity of use compatible with local context, the design principles in Policy 4B.1 and with public transport capacity. Boroughs should develop residential and commercial density policies in their UDPs in line with this Policy. Residential development should conform to the density ranges set out in Table 4B.1. The Mayor will refuse permission for strategic referrals that under-use the potential of the site."

- 6.15 Policy 4B.1 and 4B.3, and Table 4B.1, are appended to this Statement of Case at Appendix 18.

7 DETAILED CONSIDERATION: TOWNSCAPE AND DESIGN

7.1 The appeal site surroundings, which includes this part of the Norland Conservation Area, and the adjacent Edward Woods estate, contain a variety of architectural styles and visual reference points. The appeal scheme was designed in order to address the range of elements that form its townscape environment (see urban design analysis drawings, in Appendix 5). In contrast to the scheme approved in 1999 (see drawings in Appendix 10), the appeal scheme also respects the existing building lines along both the Swanscombe Road and the Norland Road frontages, and offers welcome amenity space.

Swanscombe Road elevation

7.2 At the eastern end of this elevation, the 3-storey height of the appeal scheme matches the ridge line of the adjacent 3-storey gatehouse. This is in order to provide a transition in scale from the modest scale of the gatehouse and the villas further along, located within the Conservation Area, to the dominance of the buildings viewed to the west of Swanscombe Road and beyond the Conservation Area.

7.3 At the western end of the elevation a 5-storey frontage is proposed (with a recessed fifth storey), in order not only to respond to and provide a satisfactory balance to the scale and massing of the 5-storey buildings located opposite, but also to provide a transition to the Edward Woods Estate at the west end of Swanscombe Road, where the road vista leads to the larger scale and open spaces of the estate and beyond. The officers' report to committee of 3 September stated that the 5-storey frontage *"is a suitable way to address the road and would in fact address Swanscombe Road in a more effective way than the existing approved scheme"* (see Appendix 7, para. 4.12).

7.4 The officer's report continues to state (in para. 4.13) that *"In terms of views within and along Swanscombe Road, it is considered that the site actually requires a building of some townscape presence to balance the shops with four storeys above on the northern side, and to properly terminate this side of the road, and that the proposed scheme does achieve this aim more effectively than the extant permission for three storeys."*

- 7.5 Consequently it is contended that the appeal scheme accords with, and specifically addresses RBKC UDP policies CD25, CD26, CD48, CD52 and CD53, as well as Hammersmith UDP policies EN8 and EN8(I), (ii), (iii) and (iv).
- 7.6 The detailed design treatment of the façade includes fair-faced brick to the ground floor. This has been incorporated in sensitivity to the prevailing fair faced brick of the adjacent gatehouse, the villas to the east of the appeal site and the former Organ Factory to the rear of the appeal site, respectively. Along with the other detailed material finishes (including render and terracotta tiling to the upper floors, metal finishes) and the simple modern form, the appeal scheme avoids replication or pastiche of the adjacent buildings, and is used in order to effect the transition from the Conservation Area to the surroundings west of the appeal site.
- 7.7 As such it is considered that the appeal scheme significantly enhances the character or appearance of this part of the Norland Conservation Area, and is consistent with RBKC UDP policies CD25, CD26, CD48, CD52 and CD53, as well as Hammersmith UDP policies EN8(ii), (iv) and (vi).

Norland Road elevation

- 7.8 The 5-storey height and simple modern design treatment of this façade is designed in order to acknowledge and respond to the change of scale represented by the Edward Woods Estate opposite. The RBKC officer's report to committee on 23 July 2002 noted that Hammersmith officers' recommendation was to approve the parallel application (see paragraph 4.12 of the report, at Appendix 7).
- 7.9 It is the Appellant's case that in townscape terms, the appeal scheme provides an appropriate termination of the corner at the intersection of Swanscombe and Norland Roads which is presently lacking, and assists in resolving the existing broken character of the townscape.
- 7.10 Further south along the Norland Road frontage, the proposed elevation leads on to an eclectic mix of buildings, including the modern community centre building and its annex and a building in neo-Rococco style, which houses a Sikh temple. Further south from the appeal site, the townscape

character returns to the nineteenth century terraced housing, seen in Queensdale Road. Therefore this elevation therefore effects a transition in scale between the taller, 5-storey height at the north-west corner of the appeal site, to the lower and more mixed character of development towards the south.

- 7.11 For these reasons, it is submitted that the appeal scheme significantly enhances the character and appearance of both this part of the Norland Conservation Area and also the Edward Woods Estate west of the appeal site and beyond. Therefore the appeal scheme is consistent with RBKC UDP policies CD25, CD26, CD48, CD52 and CD53, as well as Hammersmith UDP policies EN8 6 and EN8 (i)–(iii).

No. 3 Swanscombe Road (formerly "The Organ Factory")

- 7.12 No. 3 Swanscombe Road is located to the rear and east of the proposed development, and comprises a 3-storey pitched roof building, which has been converted to residential use with associated commercial activities. The elevation of No. 3 Swanscombe Road that faces the appeal site presents a blank wall with only glass block slits serving ancillary rooms.
- 7.13 The appeal scheme is further away from the Organ Factory than the scheme approved in 1999, and indeed exceeds the distance that existed between the former Sheepshank Public House and the former Organ Factory. The appeal scheme thus respects the former Organ Factory's form, design and location, and therefore prevents any harm to its character, appearance or contribution to this part of the Norland Conservation Area.
- 7.14 Accordingly it is submitted that the appeal scheme does not conflict with RBKC UDP policies CD25, CD26, CD48, CD52 and CD53 or with Hammersmith UDP policy EN8 (iii).
- 7.15 The rear of the appeal scheme's Swanscombe Road block also provides a better relationship to the Organ Factory in terms of light, sense of enclosure and overlooking than the extant permission (see the drawings in Appendix 10, and paras. 4.32-4.37 of the officer's report, at Appendix 7).

7.16 For the reasons outlined in this Section 7, it is contended that the appeal scheme is consistent with Government advice in relation to townscape and design issues, and in particular with paragraphs 4.17 and 4.20 of PPG15.

8 DETAILED CONSIDERATION: DENSITY

- 8.1 The appeal scheme provides housing, and affordable housing, for which there is a great and identified need in this area. The explanatory texts to the UDP make it clear that RBKC is one of the most expensive London boroughs in terms of house prices and private sector rents, and that there is a shortfall of affordable housing in RBKC to the tune of 9,000 units (see UDP paragraphs 5.5.8 – 5.5.9, Appendix 11). The provision of 11 units of affordable housing, and six units for private sale, is in accordance with RBKC's UDP housing policies (see RBKC UDP policies H7, H11(b), H18, H19, H21 and H22, in Appendix 11), and is not contested by RBKC in its reasons for refusal of planning permission. The provision of affordable housing units is also in accordance with Hammersmith UDP policies (see Hammersmith UDP policies HO5 and H07 in Appendix 12).
- 8.2 The reasons cited by RBKC for refusal in relation to housing are restricted to density (policies H11 and H12). The density proposed in the appeal scheme (52 habitable rooms) produces a density of approximately 520 h.r./ha and falls within a "very high" density category (i.e. above 350h.r./ha) under UDP paragraph 5.3.13 (see Appendix 11).
- 8.3 The position and surroundings of the appeal site make it an exceptional site where there is no single prevailing townscape pattern that would dictate a specific design solution, or thus impose a narrow density range. This view has the support of RBKC officers (see paragraph 4.4 in the officers' report in Appendix 7). Indeed there are highly cogent reasons that justify the appeal scheme on townscape and design grounds, including its positive contribution to the character and appearance of its surroundings and to this part of the Norland Conservation Area (see Section 7 of this Statement, above).
- 8.4 Furthermore, Government guidance encourages the most effective use of land within existing urban areas, and advises that higher densities should be encouraged to easily accessible sites (see paragraphs 6.1-6.10 and 6.14 above, and the extracts of DoE Circular 6/98, ODPM Circular 01/02, PPG3, and the Mayor's draft London Plan, in Appendices 14, 15, 16 and 18, respectively).

- 8.5 Indeed the density proposed in the appeal scheme is consistent with the Mayor of London's draft policy, as it falls within the 450-700h.r.ha density range specified in Table 4B.1, i.e. for a predominant housing type of "mostly flats", with car parking provision of less than one space per unit; and in an "urban" location (see paragraph 6.14 above, and the extract of the Mayor's draft London Plan in Appendix 18).
- 8.6 For the reasons set out in Section 7 of this Statement of Case, it is submitted that the appeal scheme positively enhances and contributes to the character and appearance of the area, including this part of the Norland Conservation Area. In relation to amenity issues, the appeal scheme was revised to ensure that the residential amenity of adjoining properties would not be harmed (see paras. 4.24 – 4.37 of the officers' report, Appendix\7). The Appellant submits that there are no further material planning issues that would justify refusal of planning permission on the ground of "very high" density alone.
- 8.7 It is therefore submitted that the appeal scheme does not conflict with RBKC UDP policies H11 and H12, Hammersmith UDP policy HO7, or Government guidance.
- 8.8 It is further contended that the appeal scheme accords with Government guidance on making efficient use of land, and in particular with paragraphs 57 of PPG3, paragraph 14 of DoE Circular 6/98, and with the advice contained in ODPM Circular 01/02.

9 DETAILED CONSIDERATION: PARKING

- 9.1 In relation to parking, RBKC's second reason for refusal cites the appeal scheme as being contrary to UDP policy TR46. This policy restricts provision to no more than two spaces for every three affordable units proposed, and one space for every market unit proposed. The provision of 11 spaces therefore complies with this policy, which would set a limit of 14 spaces.
- 9.2 The implications of providing an additional three spaces, whether at ground level or underground, are set out in the officer's committee report (see para. 4.20, Appendix 7). Such provision would significantly reduce the open space amenity for occupiers, which would be unacceptable for the proposed family-sized units.
- 9.3 The number of parking spaces proposed also takes into account the accessibility of the appeal site to public transport: Shepherd's Bush and Holland Park London Underground stations are both situated within a 500m distance from the appeal site, and at least four bus services run near the appeal site, at least one of which leads to Central London.
- 9.4 Another contributing factor to the number of parking spaces proposed is the high proportion of affordable housing proposed on the appeal site, in respect of which car ownership rates are relatively low. Indeed a tenant survey conducted by Market Opinion Research International (MORI) on behalf of the Notting Hill Housing Trust (see extract attached as Appendix 19) found that in both the RBKC and Hammersmith areas, only 25% of the Trust's tenant households have use of a vehicle (see page 24 of the MORI survey).
- 9.5 Accordingly it is contended that the level of off-street parking is entirely adequate and appropriate for the appeal scheme and its location, and that the appeal scheme complies not only with RBKC UDP policy TR46, but also with Government guidance, particularly paragraphs 14 of DoE Circular 6/98 and paragraph 60 of PPG3.

10 DECISIONS OF THE SECRETARY OF STATE AND HIS INSPECTORS

10.1 The Appellant acknowledges that each development proposal must be considered on its own merits, and in accordance with the particular circumstances of the case. Therefore, the two appeal decisions referred to below are included solely to illustrate the approach of the Secretary of State and his planning inspectors in relation to RBKC's UDP housing density policies H11 and H12, and their relationship to townscape and design considerations. Both schemes relate to proposed residential redevelopment, on sites located either within or close to RBKC conservation areas, and both schemes were allowed on appeal.

10.2 Copies of these decisions are attached as Appendix 20, marked with the relevant sections referred to below.

5-7 Hillgate Street, 2-4 Farmer Street & 36 Uxbridge Street, W8**(Appeal allowed on 14 June 2000)**

10.3 This appeal involved the erection of a new residential development at a density of 535 h.r.ha., demolition of remaining buildings, and retention of facades. The site is situated within the Kensington Conservation Area.

10.4 In relation to density, the Inspector referred to the 'higher' and 'very high' density categories in RBKC UDP policies H11 and H12. In referring (at paragraph 26 of his report) to the advice contained in PPG3 on the best use to be made of land, the Inspector stated that *"...although the proposal would not comply with the density figures identified in the UDP, it would not cause any significant harm to the character and appearance of the area.....or the living conditions enjoyed by the occupiers of neighbouring properties"*, and concluded that *"...the advice in PPG3 and the particular circumstances of the case outweigh the strict density requirements of the UDP Policies."*

Ranelagh House, Elystan Place, Chelsea (Appeal allowed on 4 June 1999)

10.5 This property lies outside, but close to, three conservation areas within RBKC: Chelsea, Sloane Square and the Royal Hospital. The appeal proposal involved extensions to the existing 1960s

building, and would increase the existing density of 398 h.r.ha to 518 h.r.ha. As in the second reason for refusal in relation to this appeal scheme, RBKC had argued that the Ranelagh House proposal would be contrary to UDP policy H12.

10.6 In relation to density, the Inspector stated (at paragraph 21 of his report) that:

"The aim in Policy H12 to resist housing designed to very high densities clearly states that an exception may be made if necessary for townscape reasons. I have already reached the conclusion that the appeal proposals would result in an improvement to the appearance of the building and to the townscape and..... that in itself does justify allowing a scheme with a very high density in accordance with the exception stated in Policy H12."

11 SUMMARY AND CONCLUSION

- 11.1 The appeal scheme represents an appropriate design solution to a challenging site that is situated on the intersection of varied and contrasting townscape qualities and architectural periods and styles. The scale, form and detailed design treatment of the appeal scheme have been extremely carefully considered and developed in consultation with RBKC officers to provide appropriate transitions between contrasting townscape environments, and to enhance the character and appearance of this part of the Norland Conservation Area. In this respect, the appeal scheme accords with RBKC and Hammersmith UDP policies, and with Government guidance.
- 11.2 A development of modern architectural design has previously been approved for the appeal site. Officers consider that the appeal scheme achieves a more successful relationship to its surroundings in townscape and amenity terms, than this extant permission, and have twice recommended the appeal scheme for approval.
- 11.3 The appeal site environment calls for flexibility in design approach and density. The provision of a density categorised by RBKC is not on its own a reasonable ground for refusal of planning permission, and where that density does not cause material harm. Therefore the appeal scheme does not conflict with RBKC UDP policies H11 and H12.
- 11.4 The appeal scheme accords with Government guidance on making efficient use of land, and increasing density. In particular, the proposed density complies with the Mayor of London's draft policy.
- 11.5 The provision of 11 parking spaces in the appeal scheme optimises the private open amenity space available, while taking account of physical site constraints, low car ownership rates, and the appeal site's accessibility to public transport. Accordingly, the proposed parking provision complies with UDP policy TR46, and with Government guidance.

- 11.6 The appeal scheme would restore the use of a derelict site and provide for housing, and affordable housing, for which there is a great and identified need in this area.
- 11.7 For the reasons set out above and in this Statement, the Inspector is therefore respectfully requested to allow these two appeals.

APPENDICES

- 1) Location plan of the appeal site
- 2) Photographs of the appeal site and its surroundings
- 3) RBKC decision letter refusing planning permission, dated 15 October 2002
- 4) The appeal scheme (application forms, drawings, design statement and RBKC acknowledgement letter)
- 5) Urban Design Analysis Drawings
- 6) Correspondence between the Appellant, the Appellant's Architects and RBKC officers
- 7) RBKC officer's reports to the Planning Services Committee dated 23 July 2002 and 3 September 2002
- 8) Minutes of Planning Services Committee dated 23 July 2002 and 3 September 2002
- 9) Correspondence between the Appellant, the Appellant's Architects and Hammersmith officers (including application forms and Hammersmith acknowledgement letter)
- 10) Relevant planning and conservation area consents (including approved drawings of scheme approved on 23 June 1999)
- 11) Extracts from the RBKC UDP adopted May 2002
- 12) Extracts from the Hammersmith proposed UDP Alterations (June 2000)
- 13) Extracts of RBKC's Conservation Area Policy Statement: Norland Conservation Area
- 14) Extracts from DoE Circular 6/98: Planning and Affordable Housing
- 15) ODPM Circular 01/02 (The Town and Country Planning (Residential Density) (London and South East England) Direction 2002) and the Deputy Prime Minister's Parliamentary Statement dated 18 July 2002
- 16) Extracts from PPG3: Housing
- 17) Extracts from PPG15: Planning and the Historic Environment
- 18) Extracts from the Mayor of London's draft London Plan dated June 2002
- 19) Extract from MORI tenant survey carried out for the Notting Hill Housing Trust
- 20) Relevant decisions of the Secretary of State and his Inspectors